

SHARON A. WATT (SBN 81377)  
Filarsky & Watt LLP  
admin@filarskyandwatt.com  
408 Bryant Circle, Suite C  
Ojai, California 93023  
Tel: (805) 640-2970  
Fax: (805) 640-2980

Attorneys for Respondent  
FALLBROOK UNION HIGH SCHOOL DISTRICT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARY STRUBLE, As Conservator for CS,	)	Civil No. 07cv2328-LAB(CAB)
	)	
PLAINTIFF,	)	<b>MEMORANDUM OF POINTS AND</b>
	)	<b>AUTHORITIES IN SUPPORT OF</b>
v.	)	<b>DEFENDANT FALLBROOK UNION</b>
	)	<b>HIGH SCHOOL DISTRICT'S EX PARTE</b>
FALLBROOK UNION HIGH SCHOOL	)	<b>APPLICATION TO CONTINUE EARLY</b>
DISTRICT, a Local Educational Agency	)	<b>NEUTRAL EVALUATION</b>
	)	<b>CONFERENCE</b>
DEFENDANT	)	
	)	<b>ENE: February 12, 1008</b>
	)	<b>Time: 2:00 p.m.</b>
	)	<b>Place: Room 1121, U.S. Courthouse</b>
	)	<b>U.S. District Judge: Hon. Cathy Ann</b>
	)	<b>Bencivengo</b>

I.  
BACKGROUND

On December 13, 2007, Plaintiff Mary Struble ("Plaintiff") as Conservator for CS ("Student") filed a "Complaint/Appeal of Office of Administrative Hearings, Special Education Division for Partial Reversal of Decision and Attorney Fees and Costs." The Complaint was filed with this Court and was assigned Case No. 07cv2328-LAB (CAB). The Complaint is titled *Mary Struble, as Conservator for CS, v. Fallbrook Union High School District*.

On January 8, 2008, FALLBROOK UNION HIGH SCHOOL DISTRICT ("District") filed

1 its Answer and counterclaims to Plaintiff's complaint. The District also filed a "Complaint for  
2 Violation of the Individuals with Disabilities Education Act" with this Court. The Complaint is  
3 titled *Fallbrook Union High School District, v. Christopher S., Paul Struble., and Mary Struble* and  
4 was assigned Case No. 08cv0049H (AJB).

5 On January 9, 2008, the Honorable Cathy Ann Bencivengo, Magistrate Judge, scheduled  
6 Case No. 07cv2328-LAB (CAB) for an Early Neutral Evaluation conference ("ENE") on February  
7 12, 2008, at 2:00 p.m. Defendant learned of the ENE conference through a routine review of the  
8 court calendar online. Defendant has never been served notice of this conference by the attorney for  
9 the Plaintiff.

## 10 II.

### 11 ARGUMENT

12 1. The February 12, 2008 Notice and Order for Setting Early Neutral Evaluation  
13 ("Order") states that personal appearance of parties is required, including "representatives of a party  
14 having full and complete authority to enter into a binding settlement, and the principal attorneys  
15 responsible for the litigation..."

16 2. The Order also states that while requests to continue ENEs are rarely granted,  
17 formal, written *ex parte* requests to continue an ENE conference will be considered when  
18 "extraordinary circumstances exist that make a continuance appropriate."

19 3. Defendant is a public school district. The District retained Filarsky & Watt, LLP for  
20 legal representation in this matter. Attorney Sharon Watt is the only Filarsky & Watt, LLP attorney  
21 authorized by the District to negotiate and enter into binding settlement agreements on the District's  
22 behalf. (See Declaration of Sharon A. Watt.) Ms. Watt attended each day of the underlying  
23 administrative hearing on the District's behalf. Ms. Watt has personal knowledge of the issues  
24 giving rise to the administrative hearing, and issues that arose following the administrative decision  
25 in relation to this Court. (See Declaration of Sharon A. Watt.)

26 4. Ms. Watt is scheduled to appear in an administrative hearing February 12 – 22, 2008  
27 for OAH Case No. N2007060599. Ms. Watt is also scheduled to appear in an administrative hearing  
28 February 25 – March 5, 2008 for OAH Case No. N2007090325. The following week Ms. Watt is

1 scheduled to appear in an administrative hearing March 10 – 14, 2008 for OAH Case No.  
2 N2007090325. (See Declaration of Sharon A. Watt.) Therefore, the District's attorney, Ms. Watt,  
3 who is the only authorized person with full and complete authority to represent the District at the  
4 ENE scheduled for the present matter on February 12, 2008 at 2:00 p.m.

5 5. The District requests a continuance to allow its attorney to participate in the ENE in  
6 person, as required by the Order.

7 6. The District attempted to contact Plaintiff to obtain mutually agreeable dates to offer  
8 the Court, but Plaintiff did not respond to the District. (See Declaration of Julie A. Henry). The  
9 Defendant's attorney Ms. Watt is available for the ENE on March 18, 2008 and March 25, 2008.

### 10 III.

### 11 CONCLUSION

12 Defendant's designated representative Ms. Sharon A. Watt, Esq. is unavailable on the  
13 current date for which the ENE is scheduled due to previously scheduled administrative hearing  
14 dates. She is the only individual at the District with the knowledge of the underlying facts and  
15 circumstances giving rise to this matter, and is the only individual authorized to represent the  
16 District. Therefore, the District respectfully requests that its *ex parte* application to continue the  
17 ENE be granted.

18  
19  
20 Dated: February 6, 2008

Respectfully submitted,

21 Filarsky & Watt LLP

22  
23 By: s/Sharon A. Watt Attorney  
24 Attorney for FALLBROOK UNION HIGH  
SCHOOL DISTRICT  
E-mail: admin@filarskyandwatt.com

**DECLARATION OF JULIE A. HENRY**

I, Julie A. Henry, declare as follows:

1. I have personal knowledge of the matters set forth in this Declaration and if called upon could and would competently testify thereto.

2. I am a certified legal assistant for Filarsky & Watt, LLP.

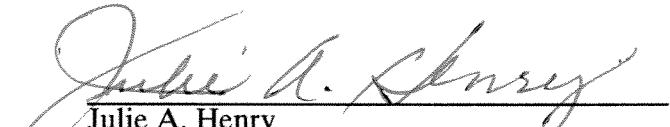
3. On January 28, 2008, at approximately 2:15 p.m., I personally telephoned the Plaintiff's counsel, Ellen Dowd. My call was answered by a recorded message identifying Ms. Dowd's law office, prompting to leave a recorded message. I left a recorded message advising Ms. Dowd that Defendant Fallbrook Union High School District's attorney Sharon Watt has a scheduling conflict regarding the Early Neutral Evaluation Conference ("ENE") set for February 12, 2008. I asked if Ms. Dowd would stipulate to a continuance of the ENE. I offered a date of March 25, 2008 for the continuance.

4. By February 5, 2008, I had not received a return telephone call or response from Ms. Dowd. I again personally telephoned Ms. Dowd at approximately 4:45 p.m. and again my call was answered by a recorded message. Again, I notified Ms. Dowd of the scheduling conflict and asked her to return my call by the next day at 10:00 a.m. During my recorded telephone message to Ms. Dowd, I offered a different date of March 18, 2008 for the continuance. On February 6, 2008, by 1:00 p.m., I still had not heard from Ms. Dowd.

5. During the week of February 11, 2008, Ms. Watt is scheduled to appear at the Office of Administrative Hearing in the matter of Haslam v. Lawndale Elementary School District, Case No. N2007060599.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2008, at Ojai, California.

  
Julie A. Henry

**DECLARATION OF SHARON A. WATT**

I, Sharon A. Watt, declare as follows:

1. I have personal knowledge of the matters set forth in this Declaration and if called upon could and would competently testify thereto.

2. Filarsky & Watt, LLP is the firm representing the Defendant Fallbrook Union High School District in this matter.

3. I am the only attorney from Filarsky & Watt, LLP authorized to represent the Defendant in this matter.

4. I am the only representative of the Defendant and the only attorney from Filarsky & Watt, LLP familiar with the issues in this matter.

5. I am not available to appear in person at the Early Neutral Evaluation Conference as I have been previously scheduled for hearing in OAH Case No. N2007060599 for February 12 – 22, 2008.

6. I am also scheduled for hearings in OAH Case No. N2007070902 for February 25 – March 5, 2008 and Case No. N2007090325 for March 10 – March 14, 2008.

7. I am available March 18, 2008 and March 25, 2008.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 6, 2008, at Ojai, California.

s/Sharon A. Watt  
Sharon A. Watt